

HONORABLE THOMAS S. ZILLY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JOSH THOMAS, individually, and on behalf of himself and all others similarly situated,

Plaintiff,

V.

AMERICAN EXPRESS COMPANY,

Defendant.

C20-5785 TSZ

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use

1 extends only to the limited information or items that are entitled to confidential
2 treatment under the applicable legal principles, and it does not presumptively entitle
3 parties to file confidential information under seal.

4 2. **“CONFIDENTIAL” MATERIAL**

5 “Confidential” material shall include the following documents and tangible
6 things produced or otherwise exchanged: Plaintiff’s account records with American
7 Express, including account statements and other financial information, as well as
8 correspondence between Plaintiff and American Express; proprietary business
9 records of American Express, including, but not limited to policies and procedures.

10 3. **SCOPE**

11 The protections conferred by this agreement cover not only confidential
12 material (as defined above), but also (1) any information copied or extracted from
13 confidential material; (2) all copies, excerpts, summaries, or compilations of
14 confidential material; and (3) any testimony, conversations, or presentations by
15 parties or their counsel that might reveal confidential material.

16 However, the protections conferred by this agreement do not cover
17 information that is in the public domain or becomes part of the public domain
18 through trial or otherwise.

19 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

20 4.1. **Basic Principles.** A receiving party may use confidential material that is
21 disclosed or produced by another party or by a non-party in connection with this
22 case only for prosecuting, defending, or attempting to settle this litigation.
23 Confidential material may be disclosed only to the categories of persons and under
24 the conditions described in this agreement. Confidential material must be stored and
25 maintained by a receiving party at a location and in a secure manner that ensures
26 that access is limited to the persons authorized under this agreement.

4.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

3 4.3. Filing Confidential Material. Before filing confidential material or
4 discussing or referencing such material in court filings, the filing party shall confer
5 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to
6 determine whether the designating party will remove the confidential designation,
7 whether the document can be redacted, or whether a motion to seal or stipulation
8 and proposed order is warranted. During the meet and confer process, the
9 designating party must identify the basis for sealing the specific confidential
10 information at issue, and the filing party shall include this basis in its motion to seal,
11 along with any objection to sealing the information at issue. Local Civil Rule 5(g)
12 sets forth the procedures that must be followed and the standards that will be applied
13 when a party seeks permission from the court to file material under seal. A party
14 who seeks to maintain the confidentiality of its information must satisfy the
15 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
16 motion to seal. Failure to satisfy this requirement will result in the motion to seal
17 being denied, in accordance with the strong presumption of public access to the
18 Court's files.

5. DESIGNATING PROTECTED MATERIAL

20 5.1. Exercise of Restraint and Care in Designating Material for Protection.
21 Each party or non-party that designates information or items for protection under
22 this agreement must take care to limit any such designation to specific material that
23 qualifies under the appropriate standards. The designating party must designate for
24 protection only those parts of material, documents, items, or oral or written
25 communications that qualify, so that other portions of the material, documents,
26 items, or communications for which protection is not warranted are not swept
27 unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber or delay the case development process or to
4 impose unnecessary expenses and burdens on other parties) expose the designating
5 party to sanctions.

6 If it comes to a designating party's attention that information or items that it
7 designated for protection do not qualify for protection, the designating party must
8 promptly notify all other parties that it is withdrawing the mistaken designation.

9 5.2. Manner and Timing of Designations. Except as otherwise provided in
10 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, disclosure or discovery material that qualifies for protection
12 under this agreement must be clearly so designated before or when the material is
13 disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic
15 documents and deposition exhibits, but excluding transcripts of depositions or other
16 pretrial or trial proceedings), the designating party must affix the word
17 "CONFIDENTIAL" to each page that contains confidential material. If only a
18 portion or portions of the material on a page qualifies for protection, the producing
19 party also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings:
22 the parties and any participating non-parties must identify on the record, during the
23 deposition or other pretrial proceeding, all protected testimony, without prejudice to
24 their right to so designate other testimony after reviewing the transcript. Any party or
25 non-party may, within fifteen days after receiving the transcript of the deposition or
26 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as

1 confidential. If a party or non-party desires to protect confidential information at
 2 trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a
 4 prominent place on the exterior of the container or containers in which the
 5 information or item is stored the word “CONFIDENTIAL.” If only a portion or
 6 portions of the information or item warrant protection, the producing party, to the
 7 extent practicable, shall identify the protected portion(s).

8 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
 9 failure to designate qualified information or items does not, standing alone, waive
 10 the designating party’s right to secure protection under this agreement for such
 11 material. Upon timely correction of a designation, the receiving party must make
 12 reasonable efforts to ensure that the material is treated in accordance with the
 13 provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1. Timing of Challenges. Any party or non-party may challenge a
 16 designation of confidentiality at any time. Unless a prompt challenge to a
 17 designating party’s confidentiality designation is necessary to avoid foreseeable,
 18 substantial unfairness, unnecessary economic burdens, or a significant disruption or
 19 delay of the litigation, a party does not waive its right to challenge a confidentiality
 20 designation by electing not to mount a challenge promptly after the original
 21 designation is disclosed.

22 6.2. Meet and Confer. The parties must make every attempt to resolve any
 23 dispute regarding confidential designations without court involvement. Any motion
 24 regarding confidential designations or for a protective order must include a
 25 certification, in the motion or in a declaration or affidavit, that the movant has
 26 engaged in a good faith meet and confer conference with other affected parties in an
 27 effort to resolve the dispute without court action. The certification must list the date,
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1 manner, and participants to the conference. A good faith effort to confer requires a
 2 face-to-face meeting or a telephone conference.

3 6.3. Judicial Intervention. If the parties cannot resolve a challenge without
 4 court intervention, the designating party may file and serve a motion to retain
 5 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
 6 5(g), if applicable). The burden of persuasion in any such motion shall be on the
 7 designating party. Frivolous challenges, and those made for an improper purpose
 8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 9 expose the challenging party to sanctions. All parties shall continue to maintain the
 10 material in question as confidential until the court rules on the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 12 OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation
 14 that compels disclosure of any information or items designated in this action as
 15 “CONFIDENTIAL,” that party must:

- 16 (a) promptly notify the designating party in writing and include a
 17 copy of the subpoena or court order;
- 18 (b) promptly notify in writing the party who caused the subpoena or
 19 order to issue in the other litigation that some or all of the material covered by the
 20 subpoena or order is subject to this agreement. Such notification shall include a copy
 21 of this agreement; and
- 22 (c) cooperate with respect to all reasonable procedures sought to be
 23 pursued by the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 26 confidential material to any person or in any circumstance not authorized under this
 27 agreement, the receiving party must immediately (a) notify in writing the designating
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1 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
 2 unauthorized copies of the protected material, (c) inform the person or persons to
 3 whom unauthorized disclosures were made of all the terms of this agreement, and (d)
 4 request that such person or persons execute the “Acknowledgment and Agreement to
 5 Be Bound” that is attached hereto as Exhibit A.

6 9. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 7 **PROTECTED MATERIAL**

8 When a producing party gives notice to receiving parties that certain
 9 inadvertently produced material is subject to a claim of privilege or other protection,
 10 the obligations of the receiving parties are those set forth in Federal Rule of Civil
 11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 12 may be established in an e-discovery order or agreement that provides for production
 13 without prior privilege review. The parties agree to the entry of a non-waiver order
 14 under Fed. R. Evid. 502(d) as set forth herein.

15 10. **NON TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each
 17 receiving party must return all confidential material to the producing party, including
 18 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
 19 appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy
 21 of all documents filed with the court, trial, deposition, and hearing transcripts,
 22 correspondence, deposition and trial exhibits, expert reports, attorney work product,
 23 and consultant and expert work product, even if such materials contain confidential
 24 material.

25 The confidentiality obligations imposed by this agreement shall remain in
 26 effect until a designating party agrees otherwise in writing or a court orders
 27 otherwise.
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2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 DATED: 11/10/2020

/s/ Chris Rosfjord

5 Chris Rosfjord, WSBA # 37668
6 Rosfjord Law PLLC
7 6725 22nd Ave., NW
8 Seattle, WA 98117
Telephone: (206) 321-4849
Email: rosfjordlaw@gmail.com

9
10 DATED: 11/10/2020

/s/ Stephen J. Newman

11 Anthony S. Wisen, WSBA # 39656
12 LAW OFFICES OF ANTHONY S. WISEN,
13 PLLC
14 1752 NW Market Street, #709
15 Seattle, WA 98107
Telephone: (206) 418-8720
Email: tony@wisenlaw.com

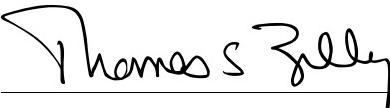
16
17 Stephen J. Newman (*pro hac vice*)
18 STROOCK & STROOCK & LAVAN LLP
19 2029 Century Park East, 18th Floor
20 Los Angeles, CA 90067-3086
21 Telephone: (310) 556-5800
Facsimile: (310) 556-5959
Email: lacalendar@stroock.com

22 *Attorneys for Defendant*
23 AMERICAN EXPRESS COMPANY

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
5 production of any documents in this proceeding shall not, for the purposes of this
6 proceeding or any other federal or state proceeding, constitute a waiver by the
7 producing party of any privilege applicable to those documents, including the
attorney-client privilege, attorney work-product protection, or any other privilege or
protection recognized by law.

8 Dated this 12th day of November, 2020.

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12 Thomas S. Zilly
13 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Western District of Washington for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 | Date: _____

20 | City and State where sworn and signed:

21 Printed name:

22 | Signature:

1 Presented by:

2 By: /s/ Stephen J. Newman

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4 Anthony S. Wisen, WSBA # 39656
5 LAW OFFICES OF ANTHONY S. WISEN,
6 PLLC
7 1752 NW Market Street, #709
8 Seattle, WA 98107
9 Telephone: (206) 418-8720
10 Email: tony@wisenlaw.com

11 Stephen J. Newman (*pro hac vice*)
12 STROOCK & STROOCK & LAVAN LLP
13 2029 Century Park East, 18th Floor
14 Los Angeles, CA 90067-3086
15 Telephone: (310) 556-5800
16 Facsimile: (310) 556-5959
17 Email: lacalendar@stroock.com

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19 *Attorneys for Defendant*
20 **AMERICAN EXPRESS COMPANY**